

## **REMARKS**

Claims 1- 45 are pending in the subject application. After entry of the above amendment to the claims, claims 2 and 5 have been cancelled, and claims 1 and 3 have been amended. The Examiner is respectfully requested to reconsider the rejection of the claims in view of the above amendments and remarks as set forth herein below.

On page 2 of the Advisory Action dated September 13, 2004, the Examiner continues to reject the claims based on the argument that “such a design would have been obvious in light of the entire disclosure of each reference and in light of the fact that the courts have recognized that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art (in re Seid, 161 F. 2<sup>nd</sup> 22, 73 USPQ 431 (CCPA 1947)).”

The purpose and/or function of the colorization of the tire according to the present invention include enhanced visibility, enhanced safety, wear detection, damage detection, camouflaging, detection of punctures, bulging and/or cracking of the tire, and other purposes and functions. One of these non-ornamental purposes or functions alone is enough to meet the statutory basis for the utility claims of the subject application. Thus, the pending claims are proper utility claims.

Regarding the Examiner's comments to Sievi-Korte, a single color sidewall as suggested by the Examiner is not a "non-repeating colored pattern" according to the claimed combination. Further, a single color ring provided by a single color sidewall is mathematically by definition a repeating pattern, not a non-repeating colored pattern according to the present invention.

Regarding the Examiner's comments to Nichols, the colored area 17 is provided on only one sidewall of the tire and is only approximately one-half of the surface of the particular sidewall. Thus, the colored area 17 shown in Figure 1 is clearly less than twenty-five percent (25%). Further, the colored area 17 shown in Figure 1 appears to be a single color, and is not a colored pattern let alone a non-repeating colored pattern according to the claimed combination.

Regarding the Examiner's comments to Rogal, a single colored stripe is not a colored pattern let alone a non-repeating colored pattern according to the claimed combination.

Regarding the Examiner's comments to Creasey, the tread and tread wear indicator 1 both have a repeating pattern in at least one (1) dimension as shown by the cross section of the drawing. Further, Creasey only discloses a single color outer layer, not a pattern let alone a non-repeating colored pattern according to the claimed combination.

None of the reference cited by the Examiner disclose a colored photographic or digital image according to claim 3.

In view of the above amendments and remarks, it is believed that the claims are in condition for allowance, and allowance is respectfully requested.

It is not believed that extensions of time are required beyond those that my otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are necessary and hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore are hereby authorized to be charged to our Deposit Account No. 11-1243.

The Commissioner is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 11-1243.

Respectfully submitted,

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